

The Mirage of Parliamentary Democracy — I

by Nazim Kamran Choudhury



The Bengali aspiration for sovereignty and self-governance that was expressed at the Grand Convention of 1950 would finally come to fruition in December, 1972 with the framing of Bangladesh's first Constitution, only to be dashed again two years later by the 4th Amendment.

THE irony of the situation was perhaps lost that night on 6th August 1991 when the Fifth Parliament unanimously adopted the 12th Amendment to the Bangladesh Constitution and entered into a new phase of parliamentary democracy. It had been the pledge of the three alliances to create a sovereign Parliament, but each had its own reasons for doing so.

The Awami League was founded in 1949 as a reaction to the East Pakistan Muslim League Government's tampering with the results of a by-election. Its commitment to one man, one vote, and multi-party democracy was reinforced in the late sixties, and when Bangladesh became a nation it was but natural that the new constitution reflected those aspirations. The honeymoon, however, was short. Within twenty-one months or less than 800 days, on a cold January morning in 1975, the Awami League abolished multi-party parliamentary democracy. So, to see the same party once again champion the parliamentary system, to see its top leaders, most of whom were members of the 1st Parliament and had voted for the 4th amendment, espouse the cause of parliamentary government, was at best, a little ironic.

The BNP had been founded in the chaos that followed 1975. Its founder, Ziaur Rahman, believed in the presidential, though multi-party, system. This philosophy was enshrined in the BNP constitution. In 1991, the BNP went into elections believing in this system and when it formed the government in March, it still believed in it. It took a rap on the knuckles from Acting President Shahabuddin Ahmed to change its mind. The Acting President pointed out that unless the Constitution was changed, presidential elections would have to be held within the 180-day period. BNP was not sure of the outcome of the presidential election, and its leader was persuaded to agree to the change to a parliamentary system. The leader was assured that it would be a change in mere form, and that in practice, it would be business as usual. And so it was.

The Jatiya Party also believed in the presidential system, but then, none of its beliefs was very strong. Convenience was their byword. Since the game would be played whether it participated or not, they did not want to be left out, and so they too went along. The Jamaat-i-Islami does not believe in either the presidential or the parliamentary system. To them, all this is a mere diversion on the road to their version of a true Islamic state. But for the moment, they also wanted to be along, and they did. The minor personalities in the Parliament in perhaps truly believed, and even if they did not fully comprehend the parliamentary system, they were enthusiastic about it.

The nation was euphoric. After twenty years of debate, the form of government was unanimously agreed on by all the political players, albeit for the wrong reasons. It therefore should not have been a surprise that the new parliamentary system would break down halfway into its full term. What then was this system we adopted, why did we adopt it, and what did we know about it? There was no member in

the 5th Parliament who had first-hand knowledge of the parliamentary system for the simple reason that none had ever served in a Westminster-type Parliament. The two year interlude of 1973-74 was a Parliament sans an opposition. What was this mirage of a parliamentary system that inspired a nation that had never seen it? For that we must travel back into time.

In the year 1600, Queen Elizabeth I gave the East India Company a Royal Charter to trade with India. The British form of government at that time was a monarchy. Although a English Parliament existed, through the rights wrested by the nobility from King John through the Magna Carta in 1215, it had little power and its wars with the monarchs would continue for over 500 years. By the time Sir Thomas Roe visited the court of Emperor Jahangir, the English Parliament had its first major reform in over 450 years. This was the Bill of Rights of 1689. This Bill declared that the English monarch could neither make nor suspend laws without the consent of Parliament, that he could not raise money except by parliamentary grant, that he could not maintain a standing army without parliamentary approval, and that no one could restrict the right of free speech within Parliament.

During the next 150 years in Europe, philosophers like Rousseau, Hobbes, Locke, Montesquieu would be writing about the rights of man, his freedoms, of forms of governments, and of constitutionalism. None of these philosophies would touch India which would remain an imperial feudal society.

The writings of these philosophers did, however, influence Europe and the new colonies of America. The writings of John Locke and later, the "Spirit of the Laws" by Baron Montesquieu re-enforced the thoughts of the American founding fathers when they were framing their declaration of independence. Baron Montesquieu's principles of the separation of powers was reflected in the Constitution of the United States. So, at a time when Robert Clive was fighting and intriguing his way to victory at Plassey and the rest of Bengal, the Americans were laying the foundation of the modern world's first true democracy with a written constitution.

Things were different in India. These lands had spawned the earliest of civilisations, with structured societies and a social contract between the ruler and the ruled. The King provided stability, safety and justice. He respected an individual's rights. In return the subjects gave him their loyalty and paid him a fair tax. Ancient India also spawned some of the greatest of philosophers whose works endure even today: Dharma Sastra by Manu; Kamasastra by Vatsyayana and possibly the most intriguing, Arthashastra by Kautilya. But over thousands of years, the balance changed. The rulers became absolute and the subjects became serfs. This is what the English found in India. They did not have to wage a war for the people, for the people did not matter. Instead they fought, negoti-

ated, bribed and coerced the rulers, playing one against the other, and soon most of India was theirs. There was no Indian nation, only nationalities: Bengalis, Marathas, Rajputs, Sikhs, Afghans, Tamils and hundreds of others. The battles were between their rulers, and the English were just one more player in the game. Thus the war of 1857 was not a war of independence as we call it, but a rebellion leading to a war for the prize of suzerainty of the Indian sub-continent.

This war did not have the philosophy of individual freedom, or people's rights, or the right of man to participate in his own governance. It was a war to decide who would rule whom, and that the Sikhs sided with the British, or that the hill Gurkhas fought on the English side against the Marathas of the plains, was only for the right to be a part of the ruling oligarchy. The British came out victorious, and it would be this victory that would bring to the Indian soil, albeit inadvertently, the seeds of human rights. The war of 1857 ended the rule of the East India Company and began the reign of the British Government.

Till the advent of the British, India had seen two types of invaders. There were those who came, plundered and left. Then there were those who came, conquered and stayed. Most of the latter had no real country, and so they stayed and assimilated into the Indian society, introducing some of their own culture and adopting many of the local ones. The British, on the other hand, were different. They kept their own identity, did not assimilate into local society and ultimate governance came from their home country. To India, they were the first foreign rulers, and changes in the philosophy of government in their own country would have tremendous effect in the colonies they ruled.

Historically there is an interesting parallel between the growth of British influence in India and the reform of the English Parliament. By early 19th century, the British were firmly in control of Bengal and were fast expanding their influence towards central and south India. At the same time, in Britain the Industrial Revolution was creating pressure on civil society. In 1832, the Reform Act brought the first major change to the parliamentary system. It increased the size and the composition of the electorate from 5 per cent to 7 per cent of the population. However small it was, the ball had gathered momentum. In India, the British began to lay the groundwork of an administrative system, and of a village law system.

Ten years after the war of 1857, Westminster undertook its second reform of the century and through the Reform Act of 1867, it doubled again the size of the electorate. It

was in the period between the two Reform Acts that philosophers such as Jeremy Bentham, James Mill, his son John Stuart Mill, and others began to influence the British middle class. Tom Paine produced his "Rights of Man" whose revolutionary ideas would spur the new political unions composed mainly of skilled workers. It would be these years between 1832 and 1867 that would transform the British political system from an oligarchy to a democracy. These developments were not lost on India.

In 1833, in a speech on the India Bill in the House of Commons, Lord Macaulay said: "The destinies of our Indian Empire are covered with thick darkness... It may be that the public mind of India may expand under our system till it has outgrown that system; that by good government we may educate our subjects into a capacity for better government; that having become instructed in European knowledge they may, in some future age, demand European institutions. Whether such day will ever come I know not. But never will I attempt to avert or retard it. Whenever it comes, it will be the proudest day in English history."

The next year Lord Macaulay was appointed Law Member of the Executive Council of the Governor-General of India, and in that capacity he advocated the policy that Lord William Bentinck would announce in 1835 as "the promotion of European Literature and Science among the Natives of India." This would be the beginning of Indian desire for European knowledge, and from that knowledge, and the desire of European institutions, the University was founded in Calcutta, Madras and Bombay. It would be the graduates of these, and other seats of learning, who would begin to yearn to be associated with governing their own country. It was this education that would plant the seeds of nationalism in the Indian mind, giving rise to individuality and the definition and protection of his fundamental rights.

The British influence was the strongest in Bengal and paradoxically it was here that seeds for socio-political reforms most took root. Dwarkanath Tagore travelled to England in 1842. He was received like royalty, meeting Prime Minister Sir Robert Peel, being presented to Queen Victoria, being the guest of honour at the Lord Mayor of London's banquet, receiving the Freedom of the city of Edinburgh and dining with Dickens, William Thackeray, Henry Mayhew and Count D'Orsay. Thirty-six years later in 1878, his grandson Rabindranath Tagore, aged 17, travelled to England more humbly, staying in lodgings seeking English enlightenment. During this period, great changes were taking place, both in Indian society as well

as in England, and western philosophy was having marked influence on enlightened Indians. It was in a speech in 1865 that John Bright said "England is the mother of parliaments." In the two years that Rabindranath Tagore stayed in England, the only great English institution described by him in his letters home were the Houses of Parliament. The two speakers, who impressed him most were John Bright and W. E. Gladstone. Six decades later in 1941, in his last lecture, he would say "The large-hearted, radical liberalism of these speeches, overflowing all narrow national bounds, made so deep an impression on my mind that something of it lingers even today."

Tagore was not the only one impressed with the English institutions. Dadabhai Naoroji, Mahatma Gandhi, Motilal Nehru, Mohammad Ali Jinnah, Jawaharlal Nehru, Liaquat Ali Khan and a host of others would feel the English experience, meet with English writers, politicians, philosophers, associate with reform movements, and return to use this inspiration to lead their people.

By the time the Indian National Congress was founded by an Englishman in 1885, the British Parliament had introduced secret ballot in 1872, and established effective controls on electoral expenditure and sanctions on bribery by the Corrupt Practices Act of 1883. In 1884, the electorate was further increased to 67 per cent, though complete manhood suffrage came only in 1918 based on "one man, one vote." Women suffrage came in two stages in 1918 for women above 30 years and in 1928 for others.

The First World War was a watershed in the Indian struggle for freedom. By then, it had become crystal clear that self-rule was the only demand that the Indian political parties would accept, and there was little debate on the form of government. It was generally agreed that governance would be through elected legislatures having a cabinet form, a lot like the Westminster system. What was unclear was the amount of autonomy the British were prepared to give. The Government of India Act, 1919, affirming limited self-rule was unacceptable, as in the words of Gandhi in 1921, "The object is the attainment of Purna Swaraj (complete self-rule) by all legitimate and peaceful means."

The period between the 1st and 2nd World Wars would also change civil society in Britain. With the formation of the Labour Party, increased electorate and due to the economic ravages of the First War, trade union representation in Parliament increased dramatically. This would be a period of class struggle, that of the working masses against the British aristocracy, and would lead to democratisation not only of politics, but of society itself. Simultaneously, in India, the non-cooperation move-

ment and the demand for direct rule involved for the first time in the history of the sub-continent, the common people in mass movements. Ideas of liberty, equality and the right to participate in their own governance was bought to the grassroots level, awakening aspirations that are yet to be quelled in many of the territories that comprised India.

The result of all these factors was the Government of India Act, 1935. This Act introduced to India, for the first time, representative legislatures at both the provinces and the centre. There were three divisions of subjects, the federal, provincial and concurrent. The provinces were autonomous in that they could legislate on provincial and concurrent subjects. The Act reposed executive authority on the Governor-General at the centre and the Governors in the provinces. There was a council of ministers, responsible to the legislature, to aid and advise the Governor and the Governor-General. The structure of the Act was to introduce a federal parliamentary system in India. Winston Churchill called the Act "a gigantic quilt of jumbled crochets work, a monument of shame by pigmies". The Indian political forces decried the Act, but nonetheless participated in the elections and formed provincial and central ministries. The province which best adopted and practised this Act was Bengal, and the years between 1937 to 1947 saw the working of the Bengal provincial legislature and the Bengal provincial government. In 1947, the British quit India and two nations were born, India and Pakistan. The law that gave independence to these two countries was the Independence of India Act, 1947, which was, with some amendments, the Government of India Act, 1935.

On 26th November, 1949, the Indian Constituent Assembly adopted, enacted and gave to themselves a new Constitution. The framers of the Constitution led by Dr B R Ambedkar, a lawyer who studied at Columbia University of New York, had a wealth of sources to draw from. The US Constitution and the Bill of Rights paved the way for fundamental rights to be incorporated in the Constitution, but in the model of the executive, and in the machinery of government, the British form was followed. In fact, the framers adopted greatly from the Government of India Act, 1935, as in Dr. Ambedkar's words, "As to the accusation that the Draft Constitution had produced a good part of the provisions of the G.I. Act, 35, I make no apologies. There is nothing to be ashamed of in borrowing. It involves no plagiarism. Nobody holds any patent rights on the fundamental ideas of a Constitution." With the new Constitution enacted, the political leaders of India set about practising the ideals that had inspired them during the long years of their struggle for freedom.

In the case of Pakistan, Constitution framing was entirely a different story. Moudud Ahmed's "Bangladesh: Constitutional Quest For Autonomy" gives one of the best chronological records of the process. The first Constituent Assembly comprised of sixty-nine members (subsequently increased to seventy-four) who were elected in 1946 to the federal legislatures of India from the territories that subsequently formed Pakistan. This Assembly bogged down almost immediately on issues of federation and provincial autonomy. The Assembly formed a Basic Principles Committee in September, 1950, which after eighteen months came out with a draft recommendation whose features were: a bicameral legislature; executive authority vested in a President; and a cabinet headed by a Prime Minister responsible to the legislature. Urdu would be the state language.

This mixture of parliamentary and presidential systems was rejected outright by most of the politicians, particularly in East Pakistan. Within weeks a group of politicians, writers, journalists and lawyers of all opposition shades and groups formed a Committee of action for Democratic Federation to mobilise public opinion for establishing full provincial autonomy. Moudud Ahmed, A Grand Convention was held on 14th November, 1950, presided over by Ataur Rahman Khan which announced its own alternative constitutional proposal, and called for fresh elections to the Constituent Assembly. The proposals called for a federal structure with a unicameral legislature elected on population basis through a joint electorate (not separate electorates for Hindus and Muslims) to which the cabinet would be individually and collectively responsible. Both Urdu and Bengali would be the state languages.

The counter proposals would now form the basis for future negotiations and would reflect the most genuine aspirations of the Bengalis. Seeing the adverse reaction to its draft report, the Constituent Assembly postponed its discussions on it, and after another two years, came out with a second draft, which was somewhat of an improvement over the first. In the meantime, with the demise of Mohammed Ali Jinnah and Liaquat Ali Khan, real power at the centre was slipping into the hands of the civil bureaucracy and the power elites of the Punjab. In East Pakistan, resentment against the ruling Muslim League Government was reaching unprecedented heights, and when elections finally came in 1954, the United Front won 228 of the 237 Muslim seats. The Constituent Assembly had also lost all reason to exist, and the Governor-General, although for totally different reasons dissolved it in October 1954.

The decision of the Governor-General was challenged in the Chief Court of Sindh and then in the Federal Court by Tamizuddin Khan, the President of the Constituent Assembly. The Federal Court upheld the decision of the Governor-General, but in the case of Usif Patel vs Crown, it held that the Governor-

General had no law-making powers. There was now a constitutional vacuum in Pakistan. Invoking the advisory jurisdiction of the Federal Court, the Governor-General sought a way out of the impasse. In the Reference No 1 of 1955, the Federal Court, through an arduous process of interpreting the Indian Independence Act, 1947, extricated itself by advising the formation of a new Constituent Assembly. As Moudud Ahmed observed, "As the first constituent Assembly was dissolved unconstitutionally by the Governor-General, so was the second Constituent Assembly constituted unconstitutionally by the order of the Federal Court."

The second Constituent Assembly was formed with 80 members, 40 from each wing. On the 23rd March, 1956, it presented the country its first Constitution. The Constitution was derived mainly from the Government of India Act, 1935, particularly with regard to provincial autonomy. There would be a unicameral legislature to which the members of the cabinet would be individually and collectively responsible. Along with the new Constitution came new political intrigues, particularly initiated by the Governor-General Iskander Mirza who had himself elected President. Elections were scheduled for February, 1959, but in October 1958, Martial Law was declared and the Constitution abrogated. This would be the end of the parliamentary system of government in united Pakistan. In 1972, in his judgment in Asma Jilani vs Government of the Punjab, Chief Justice Hamoodur Rahman would write, "The 1956 Constitution... was, it is alleged, a constitution framed by an illegally constituted body which was, under the threat of refusal of assent, also coerced into electing General Iskander Mirza as the first President of Pakistan. The process of illegality thus set in motion led in its turn to the illegal usurpation of power by the President so elected under the said Constitution." The first decade of governance in Pakistan was parliamentary merely in form. In nature it was governance through intrigue, bribery, coercion and intimidation in which none of the sections of the state, legislative, executive or judicial, was devoid of shallowness.

The Bengali aspiration for sovereignty and self-governance that was expressed at the Grand Convention of 1950 would finally come to fruition in December, 1972 with the framing of Bangladesh's first Constitution, only to be dashed again two years later by the 4th Amendment. It would take another sixteen years before it would be reborn through the 12th Amendment. The 5th Parliament was parliamentary in form, and for the first time finished its full term. But was it parliamentary in nature, and did its tenure reflect the true parliamentary spirit? To answer that we must examine the essence and culture of the parliamentary system. (To be concluded tomorrow)

The author, a former MP from BNP, is an occasional columnist and one of the directors of Centre for Analysis and Choice (CAC), a national policy research body.

The Law and Our Rights page is held for today. —Ed

The Daily Star Entertainment Guide

Sunday 2nd June

(All programmes are in local time. We recommend programmes printed in bold. There may be changes in the programme.)

BTB

3:00 Opening Announcement At Dawn Programme Summary 3:10 Recitation from the Bible 3:15 Cartoon: Woody Woodpecker 3:45 Re-teletext of weekly Drama 4:00 News in Bangla 4:45 Anu Parman: Science Programme for Teenagers 5:00 News in Bangla 5:25 Sports Programme 6:00 News in Bangla 6:30 Jibon Janyo: Health Programme 7:00 News in English 7:05 Open University 7:25 Tagore Songs 8:00 News in Bangla 8:25 Jamnabai 8:30 Shipa-Bangla Artho 9:00 Film Series: Akbar The Great 10:00 News in English 10:30 Shasthastha: Health Programme 10:35 Sur Lohori 11:30 News in Bangla, 11:35 Monday's programme 11:40 Close down

BBC

6:00am BBC World News 6:30 India Business Report 7:00 BBC World News 7:25 This Week 8:00 BBC World News 8:30 India Business Report 9:00 BBC World News 9:30 Horizon 10:00 BBC World News 10:20 Britain In View 11:00 BBC World News 11:25 India Business Report 12:00am BBC World News 12:20 This Week 1:00 BBC World News 1:05 Correspondent 2:00 BBC World News 2:30 Time Out: Film 3:00 BBC World News 3:30 Time Out: Cuts 4:00 BBC World News 4:05 Everyman 5:00 BBC World News 5:20 Face To Face 6:00pm BBC World News 6:05 Great Railway Journeys 7:00 BBC World News 7:05 Breakfast With Frost 8:00 BBC World News 8:30 Time Out: Top Gear 9:00 BBC World News 9:05 Horizon 10:00

CHANNEL V

7:00am News Vision 9:00 The Ride VJ Trey 10:00 Pantalone Fashion Police 10:30 The Best of Ek Ka Teen 11:00 SPL Oye! 12:00 Sansui Mangta Hai 12:30 First Day First Show 1:00 Speak Easy 1:30 Big Bang VJ Alessandra 2:00 Philips V-People 2:30 Videocon-Flash Back 3:00 Asian Top 20 VJ Norie 5:00 Rewind VJ Sophya 5:30 Top of the Pops 6:30 Classic Rock 7:30 Time Pass 8:30 Indian Top Ten 9:00 Launch Pad VJ Sophya 10:00 The Ride 11:00 Rewind VJ Norie 12:00 Asian Top 20 VJ Norie 2:00 By Demand VJ Trey 3:00 Frame By Frame

STAR PLUS

6:30am Voltron 7:00 King of the 7:30 Classic Cartoons 8:00 Terry Toons 8:30 Top Gun 9:00 Ek Tar Kat 9:30 India Business Week 10:00 The Road Show 11:00 Amd India Show 11:30 Jandy

Launch Pad on Channel V, Tonight at 9:00

BBC World News 10:20 Earth Report 10:30 Time Out: More Rhodes Around Britain 11:00 BBC World News 11:20 On the Record 12:00am BBC World News 12:20 Window On Europe 1:00 BBC World News 1:05 Under The Sun 2:00 BBC World News 2:30 Time Out: Nature 3:00 BBC World Report inc. World Business Report 24 Hours 5:00 BBC World News 5:15 The Money Programme

Pride 12:30 The Fall Guy 1:30 Vegas 2:30 Best Sellers: 'Act Of War' 4:30 The Love Boat 5:30 World Around Us: Ancient Prophecies 6:30 Amd India Show 7:00 The Road Show 7:30 Snowy River: The McGregor Saga 8:30 Beverly Hills 90210 9:30 Picket Fences 10:30 Burke's Law 11:30 21 Jump Street 12:30 Star Trek: The Next Generation 1:30 India Business Week 2:30 Amd India Show 3:00 The Oprah Winfrey Show 4:00 Hard Copy 4:30 Home And Away 5:00 The Sullivan

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STAR Sports

6:00am 1996 Omega Tour 6:30 The 1996 Volvo China Tour Blue Ribbon Open 8:00 SEA Touring Cars 8:30 Juba Juba, Malaysia 8:30 Formula One World Championship, 1996 Spanish Qualifying 9:30 Live 4 Nations Tournament 3/4 Playoff Game From Brisbane, Aus 11:30 Live 4 Nations Tournament Final From Brisbane, Aus 1:30 1996 Wd M/Cycle Champ Italian GP H/L 2:00 The 1996 Volvo China Tour Hugo Boss Open 3:00 Live PGA Tour 3:30 WFL Highlights 4:00 The Asian Football Show 5:00 Asia Sport Show 5:30 Live Formula One World Championships, 1996 Spanish Grand Prix 8:00 1996 Wd M/Cycle Champ Italian GP H/L 9:30 Volvo China Open Day 3 Highlights 10:00 GLF Volvo China Open Day 3 Hits 10:30 CKT: Same Day Delay Cricket 96: Sunday League 3:30 The 1996 Volvo China Tour Hugo Boss Open 4:30 Australian Football League Highlights 5:30 Asia Sport Show

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